

# City of Detroit

## CITY COUNCIL

IRVIN CORLEY, JR.  
DIRECTOR  
(313) 224-1076

FISCAL ANALYSIS DIVISION  
Coleman A. Young Municipal Center  
2 Woodward Avenue, Suite 218  
Detroit, Michigan 48226  
FAX: (313) 224-2783  
E-Mail: irvin@cncl.ci.detroit.mi.us

ANNE MARIE LANGAN  
DEPUTY DIRECTOR  
(313) 224-1078

TO: COUNCILMEMBERS

FROM: Irvin Corley, Jr., Fiscal Analyst *ICJ*  
Anne Marie Langan, Deputy Fiscal Analyst *AML*

DATE: April 11, 2008

RE: Transfer/Lease of the Detroit-Windsor Tunnel **(Do Not Recommend Approval at this Time)**

We received this latest package of documents from the Mayor's office on Monday, April 7. The documents were presented with a memorandum from Anthony Adams to Council dated April 4, 2008. On Monday as well, we received from the Council President's office a photocopy of what their office received from the Mayor's office, that by all appearances was the same pack of documents requesting Council authorization on a set of documents to get the tunnel deal in motion. These two packages of documents are different versions of similar documents. From a non-legal cursory review, the only substantive difference we recognized was the indemnification clause in the Purchase Agreement for the benefit of the City was not in both versions. There were many other differences as well, but they need to be reviewed by legal counsel to determine the significance of the differences.

So our office reviewed and analyzed both sets of documents. There is nothing in this package that presents any analysis as to why this deal is a good deal for the City of Detroit, which it may be.

The most recent material received by City Council from the Administration is limited in its nature to a group of legal documents. The material submitted does not contain any financial information, such as valuation of the assets, revenue streams both past and projected, etc. A dollar amount of \$65 million is referenced without any data to support the figure, or the method used to arrive at the amount. The value of a tunnel deal, as proposed by the Administration over the last two or three year period has ranged from \$20 million to \$75 million, and we have recently secured information that places the value of the Windsor side of the tunnel well over these estimates. All of the relevant financial data in support of the proposed tunnel deal should be provided before any Council decision is made, even if the decision being presented to Council is limited to establishment

of necessary authorities or entities that would allow the transfer of the City's interest in the tunnel to take place at a future date.

We have serious concerns as to the ability of any tunnel deal to be completed in the near future, and envision virtually no possibility of completion prior to the end of the current fiscal year. This is based on the lack of any data that indicates the ability of the other party, the City of Windsor, or the recently created entity that may be taking over the operation of the tunnel from the City of Windsor, to secure financing to allow the purchase from the City of Detroit of their interest in the tunnel. Recent news articles, which at this time must be relied upon by City Council for lack of other sources, indicate that Windsor City Council Members have similarly unanswered questions concerning the tunnel deal. It appears doubtful that financing can be arranged, along with other concerns.

To our knowledge when previous discussion on the tunnel deal were held, Goldman Sachs was in attendance as the lead financial advisors and as the firm who would be involved in the marketing of any necessary securities. However, we believe that Goldman Sachs has withdrawn, and are not aware of any new financial advisors who may have replaced Goldman Sachs. This may explain the lack of any sold financial data being presented.

The following questions should be responded to in writing and provided to all Councilmembers and support staff.

1. Where is the documentation the Administration has used to accept a purchase price of \$65 million? The city of Windsor hired Price Waterhouse Coopers (PWC) to conduct a valuation of the Canadian tunnel last June and have used the city of Windsor's outside auditors, KPMG, to ensure that the appropriate accounting values were used to established the opening balance sheet of the tunnel assets before transference from the City to the new Windsor-Detroit Tunnel Corporation. Has the City of Detroit conducted the same research? If not why not?
2. In light of GASB (Governmental Accounting Standards Board) regulations on recording the value of infrastructure, what value has the city placed on the tunnel? Where is this reported and who conducted that assessment?
3. According to the documents provided the purchase price is \$65 million and Anthony Adams writes that \$65 million will receive an upfront payment of \$65 million by transferring ownership of the tunnel. So if the city is receiving \$65 million, what proceeds will cover payment for legal fees as referenced in the proposed resolution? Why is Pepper Hamilton LLP the only firm referred to? What about all the financial advisors? How will they be paid? What about the advisors that pulled out from the project? Have they submitted bills? Note to Council - The *Windsor Star* reported on April 4, 2008, that the city of Windsor has spent \$1.2 million in legal fees on this deal thus far.

4. Why does only one version of the purchase agreement have an indemnification clause to protect the city?
5. Did the Windsor City Council authorize the transfer of the Windsor-owned tunnel to the new entity, the Windsor-Detroit Tunnel Corporation at the scheduled meeting of March 27, 2008?
6. In a *Windsor Star* newspaper article on April 4, 2008, it was reported that Windsor City Councilor Bill Marra, who is also a member of the tunnel commission, feels that his comfort level on the deal has declined since the federal and provincial governments backed away. Councilor Marra is quoted as having said, "Initially, it (we believe he is referring to the lease of the Detroit piece of the tunnel) was based on being able to secure funding from the provincial and federal governments. I understand those opportunities don't exist. Regardless of how this is set up, it falls on the municipal taxpayer and there needs to be a good business case." Is some government either federal or provincial assisting the city of Windsor with this deal or will the deal be done solely by the city of Windsor with no outside help.
7. According to our research, the Windsor City budget budgeted and collected tunnel revenue of \$6 million per year through 2005. In 2006 the city only received \$3 million, the 2007 the budget was \$1 million and in the 2008 budget that the Windsor City Council recently approved there is no projected revenue from the tunnel. What have the gross receipts for tunnel revenue been since 2000? If there are drops in revenue, how will this stretch the repayment of the purchase price given to the City of Detroit?
8. Windsor City Councilor Alan Halberstadt has written that he asked at a public session of Windsor City Council of June 25, 2007, "With regards to the negotiations taking place regarding the municipal ownership and operation of the Detroit-Windsor Tunnel, I request an actuarial study, a detailed financial prospective, a risk assessment, a traffic volume/revenue/expenditure analysis since September 11, 2001 and a projection of the lifespan of the facility." Have any of these reports/documents been produced and has anyone from the Administration reviewed them? When will they be provided to the Detroit City Council?
9. Regarding the Interlocal Cooperative Agreement for Accepting Tunnel Bus and DDOT Transfers During Trial Period - Did this agreement (contract) ever have Council Approval? If so, document the approval. If not, why was it not submitted for Council Approval? Does Research and Analysis agree with the submission for approval, or that Council approval is not required?
10. Do all the documents include a reversion to the City of Detroit clause, or at a minimum a first right of refusal?

11. Show Council a flow chart of the various entities already created and to be created that will permit this deal to take place.

Additionally, Council President Cockrel in early March 2008, submitted a memorandum entitled "Tunnel Deal and Request for Detailed Information" to Norman White, Finance Director, thru Councilmember Sheila Cockrel as Chairperson of the Budget, Finance and Audit Committee, requesting the following list of twelve documents be sent to the Council President's office immediately:

1. All negotiated and executed documents between Detroit and Windsor
  - a. **Nothing submitted in most recent material**
2. All financial documents supporting proceeds going to City.
  - a. **Nothing submitted in recent material**
3. Any engineering studies supporting the condition and useful life of the tunnel.
  - a. **Nothing submitted in recent material**
4. An appraisal of the tunnel even though the deal is primarily predicated on toll revenues, past, present and predicted.
  - a. **Nothing submitted in recent material**
5. Documents supporting the creation of the Detroit Tunnel Corporation, a creature of the state.
  - a. **If this is included, and we believe it may be, Council and staff will review and indicate where the documents need to be amended for Council to consider them.**
6. Likewise, documentation supporting Windsor's entity that would "own" it's half of the tunnel.
  - a. **An unsigned document, not included in the material from the administration but from another source, appears to detail the set up of an entity by the City of Windsor. Approval or even consideration by the Windsor Council is not indicated, and there is no mention that the purpose of this entity is to facilitate a joint agreement with Detroit.**
7. A good explanation why Windsor's side is "more valuable"
  - a. **Nothing submitted in recent material**
8. The parties involved, including point persons, in structured deal, since now an underwriter is not going to be utilized for the deal. Meanwhile, please provide copies of all Goldman Sach's information if the current deal is basically the same Goldman Sach's put together.

**a. Nothing submitted in recent material**

9. As emphasized in previous meetings by our Finance Director, Council needs to understand what \$75 million, or whatever the figure is, means. I take it as meaning the present value of all projected revenues on the deal. If this is the case, calculations showing this need to be provided, with all assumptions (basis of revenue projections, cost of maintenance of the tunnel, what happens after 2020, when DCTC goes away)

**a. Nothing was submitted in recent material**

10. All documentation indicating the Province of Ontario's financial support for this deal if any.

**a. Nothing was submitted in recent material**

11. Windsor City Council's approval of the deal as currently structured.

**a. Nothing was submitted in recent material**

12. Any concurrent agreement from the Windsor Commission that currently runs Windsor's side of the tunnel.

**a. Nothing was submitted in recent material.**

We would request that a timeline be prepared by the Administration and submitted to Council that includes submission of all of the above items and all dates for anticipated action on the proposed deal in its entirety, as well as written responses to all questions listed above. Only then will Council begin to have sufficient information to determine as to whether this is a sound fiscal proposal.

**Attachments**

cc: Council Divisions  
Auditor General  
Anthony Adams, Mayor's Office  
Kandia Milton, Mayor's Office  
Norman White, Finance Director  
Pamela Scales, Budget Director  
Kerwin Wimberly, Mayor's Office

## TUNNEL PURCHASE AGREEMENT

THIS TUNNEL PURCHASE AGREEMENT (this "**Agreement**") is entered into as of April \_\_, 2008 (the "**Effective Date**") between the City of Detroit, Michigan, a Michigan municipal corporation and home rule charter city ("**Seller**") and the Detroit Tunnel Authority, a Michigan public transportation authority ("**Purchaser**").

### RECITALS:

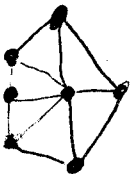
A. Seller owns the United States side of a tunnel connecting Seller with the city of Windsor, Ontario, Canada; as more particularly described in Exhibit A (the "Detroit Tunnel").

B. Purchaser is acquiring all of Seller's right, title and interest in and to the Tunnel, including certain personal property and goodwill of the Detroit Tunnel (collectively, the "**Business**").

C. Purchaser desires to acquire all of Seller's remaining right and interest in and to the Detroit Tunnel (other than the Business), including the Purchased Assets.

D. Seller is the owner of the Purchased Assets (as hereinafter defined); and

E. Seller desires to sell, and Purchaser desires to acquire, the Purchased Assets on the terms described herein.



NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

### 1. PURCHASE AND SALE; THE PURCHASED ASSETS.

A. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to convey and transfer to Purchaser, and Purchaser agrees to acquire from Seller the Purchased Assets.

B. The term "**Purchased Assets**" shall mean all of Seller's right, title and interest in and to all of the following:

(i) the real property located in the County of Wayne, City of Detroit, more particularly described on attached Exhibit A (the "**Land**") and together with all of Seller's right, title and interest, in and to all rights, easements and interests, water rights, air rights, minerals and mineral rights, oil, gas and other hydrocarbon substances, timber and timber rights, all development rights, streets, public ways or rights-of-way, roadways, including any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the land to the center thereof (including the interest of Seller in and to any award made or to be made in lieu thereof), improvements, tenements, hereditaments, privileges and appurtenances, rights and benefits belonging or in any way appertaining thereto (collectively "**Appurtenances**"). Such Land and Appurtenances (the "**Property**"); and

(ii) machinery, fixtures (including all trade fixtures as defined in the Michigan Uniform Commercial Code), equipment and other tangible personalty, located on or about the Property and used in connection therewith and not otherwise conveyed pursuant to the Asset Agreement (collectively, the "**Personal Property**").

## 2. PURCHASE PRICE; ADJUSTMENTS.

A. The purchase price ("**Purchase Price**") for the Purchased Assets shall be SIXTY-FIVE MILLION AND 00/100 DOLLARS (\$65,000,000.00), and shall be payable at Closing by a wire transfer in immediately available funds of the Purchase Price, as adjusted by prorations, credits and the other adjustments set forth herein. The Purchase Price is allocated as follows:

Land:	\$ _____
Appurtenances:	\$ _____
Personal Property:	\$ _____
Total:	\$65,000,000.00

B. All rent collected by the Seller shall adjusted and/or prorated as the Closing Date (with expenses on the Closing Date being paid by the Buyer), and the net amount thereof shall be added to, or deducted from, the Purchase Price as the case may be:.

(i) Charges for electricity, water, sewer, natural gas and sanitation shall be paid by Seller to the Closing Date.

(ii) All other items customarily prorated or required by any other provision of this Agreement to be prorated or adjusted shall be prorated or adjusted in a manner customary in the community where the Property is located.

The parties hereto agree that all rights and interest in nonpayment of and/or adjustment to rents and/or claims of any kind prior to the Closing Date shall remain the property of the Seller.

## 3. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller hereby represents and warrants the following to Purchaser, which shall survive the Closing:

A. Seller owns fee simple title to the Purchased Assets, free and clear of all liens, claims, encumbrances and matters, except the Permitted Exceptions.

B. Seller is a Michigan municipal corporation and home rule charter city, validly existing, and in good standing under the laws of the State of Michigan. Seller has requisite power and authority to enter into this Agreement and convey the Purchased Assets and perform its obligations as set forth herein and after execution by Seller, this Agreement shall be enforceable against Seller in accordance with its terms. Seller will execute and deliver to Purchaser, or cause to be executed and delivered to Purchaser, all documents and instruments necessary to consummate this transaction in accordance with the terms hereof.

C. The Property is not subject to any unrecorded encumbrances, restrictions, easements, boundary disputes, or agreements or other matters not of record.

D. The Property is not subject to any deed restrictions, easements, use restrictions, encroachments or statutes, ordinances, rules, regulations, restrictions or codes (including building and use codes and zoning ordinances) which would prevent or restrict the intended use or resale of the Property by Purchaser. There are no unrecorded liens or assessments (including special assessments) against the premises.

E. The Purchased Assets are not subject to any claim of lien or special assessment, either recorded or unrecorded, and no improvements to or upon the property have been made within 120 days prior to the date of this Agreement which could give rise to a claim of lien or special assessment.

F. There are no condemnation proceedings pending or contemplated against any part of the Property.

G. There are no public improvements which have been ordered, threatened, announced or contemplated which have not been completed, assessed and paid for.

H. Seller has, as of the date of this Agreement, received no notices of violation of any law, rule, regulation or ordinance issued in connection with the Purchased Assets by any agency or department having jurisdiction thereof, and Seller hereby agrees to provide Purchaser with copies of any such notices received after the date of this Agreement.

I. Seller has obtained all licenses and permits from all governmental authorities necessary for the operation and use of the Property as a tunnel. Seller shall assign, to the extent assignable, to Purchaser at Closing all such licenses and permits which are necessary to enable Purchaser to use and operate the Property.

J. The Property has adequate access from public roads or rights-of-way.

K. The performance of this Agreement does not and will not be in violation of default under or conflict with Seller's organizational documents, any statute, law or regulation, or any judgment, contract or agreement to which Seller is a party or by which it is bound.

L. This Agreement and any other information furnished to the Purchaser in connection with the transactions contemplated by this Agreement neither contain any untrue statement of material fact nor omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

#### **4. PURCHASER'S WARRANTIES AND REPRESENTATIONS.**

Purchaser represents, warrants and covenants, that it has the power and authority to enter into this Agreement and that after this Agreement has been executed by the authorized manager of Purchaser, this Agreement shall be enforceable against Purchaser in accordance with its terms.



**5. NOTICES OF VIOLATION.**

All notices of violation of any law, statute, ordinance, rule, or regulation of any governmental agency having jurisdiction thereof issued to Seller prior to the Closing Date against or affecting the Purchased Assets shall be sent to Purchaser and shall be satisfied or complied with by Seller prior to the Closing.

**6. CLOSING DATE.**

The closing for the transaction contemplated by this Agreement (the "**Closing**") shall be held on or before \_\_\_\_\_, 2008 (the "**Closing Date**"), unless Seller and Purchaser agree in writing to later date.

**7. CONDITIONS PRECEDENT.**

The following are conditions precedent to Purchaser's obligation to complete the transaction and unless the conditions are satisfied or waived in writing by Purchaser:

A. Seller shall have performed and complied with all agreements, covenants and obligations of Seller under this Agreement. Each representation and warranty of Seller shall be accurate, complete and true on the Closing Date.

B. The Property shall be in compliance with all zoning laws, building and use laws, codes and restrictions, including the Americans With Disabilities Act and all other restructuring affecting the Property.

C. The Property shall be in compliance with all laws, statutes, orders, ordinances, codes, rules or regulations of any federal, state or municipal body or other governmental agency or authority having jurisdiction thereof, including, without limitation, occupational safety and health requirements, lead-based paint regulations, asbestos abatement rules, regulations and requirements, occupancy permits.

D. Purchaser shall have received financing to purchase the Purchased Assets.

**8. CLOSING DELIVERIES.**

A. The transactions provided for in this Agreement shall be consummated on the Closing Date at the offices of Title Company.

B. At the Closing, Seller shall deliver the following documents each to be in form and substance reasonably satisfactory to Purchaser and duly executed by the appropriate signatory:

(i) a good and sufficient Quit Claim Deed in the form of attached Exhibit B conveying the Property to Purchaser ;

(ii) a Bill of Sale, with warranties, in the form of attached Exhibit C, pursuant to which Seller transfers to Purchaser Seller's interest, in the Personal Property; and

(iii) such other documents and instruments as may be required by any other provision of this Agreement or as may reasonably be required to give effect to the terms and intent of this Agreement.

C. On the Closing Date, Purchaser shall deliver to Seller, in immediately available funds by wire transfer, the Purchase Price.

D. Unless otherwise provided by this Agreement, the transfer documents shall be in form and substance sufficient to transfer and convey to Purchaser all of Seller's right, title and interest in and to the Purchased Assets free and clear of all liens, subject only to the Permitted Exceptions.

## **9. INDEMNIFICATION**

To the extent permitted by law, Purchaser agrees to indemnify and save Seller, harmless from any and all liabilities, damages, causes of action, suits, claims, judgments, costs and expenses of any kind (including reasonable attorneys' fees) arising out of, and in any way related to: (i) Purchaser's possession, use, or operation of the Business, Property and Purchased Assets occurring after the Closing Date, or (ii) the breach of any representation or warranty set forth in this Agreement. This indemnification shall survive for a period of one (1) year after the Closing Date.

## **10. NOTICES.**

All notices required or desired to be given hereunder by either party to the other, shall be in writing and shall be deemed to have been given (i) upon receipt if delivered in person with proof of signature, or (ii) the third business day after mailing, if mailed, first class certified, registered or express mail, return receipt requested and postage prepaid and with proof of signature, or (iii) the following business day if sent by recognized overnight courier with proof of signature and with charges prepaid, or (iv) the same business day if sent by facsimile, provided that confirmation of receipt by the receiving party can be documented, when sent to the following addresses or fax numbers:

If to Purchaser to:

Anthony Adams  
Deputy Mayor  
City of Detroit  
Coleman A. Young Municipal Building  
1126 City County Building  
11<sup>th</sup> Floor  
Detroit, MI 48226

with a copy to:

John Johnson  
Corporation Counsel  
City of Detroit  
660 Woodward Avenue  
Fax: (313) 224-5505

If to Seller:

\_\_\_\_\_  
Detroit Tunnel Authority  
\_\_\_\_\_  
Detroit, Michigan 48226  
Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Detroit, Michigan 482\_\_  
Fax: \_\_\_\_\_

or to such other address as a party may specify by written notice to the other party.

#### **11. MISCELLANEOUS.**

A. This Agreement may be executed in multiple counterparts and is to be construed as a contract under the laws of the State of Michigan, sets forth the entire contract between the parties, merges all prior and contemporaneous agreements, understandings, warranties or representations, and may be cancelled, modified or amended only as set forth herein or by a written instrument executed by both Seller and Purchaser. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement nor to be used in determining the intent of the parties to it.

B. No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing, signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default.

C. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, personal representatives, successors, and assigns.

D. Time is of the essence in complying with the terms and conditions of this Agreement.

E. All references to exhibits contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes the same as if set forth herein verbatim, it being expressly understood that if any exhibit attached hereto which is to be executed and delivered at Closing contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained herein and as contemplated herein prior to or at the time of execution and delivery thereof.

F. Unless otherwise provided, any required consent of a party shall not be unreasonably withheld, conditioned or delayed by such party.

**(Signature Page Follows)**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SELLER:**

**THE CITY OF DETROIT, MICHIGAN**

By: \_\_\_\_\_  
Its: Mayor

**PURCHASER:**

**THE DETROIT TUNNEL AUTHORITY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit A	Legal Description
Exhibit B	Form of Quit Deed
Exhibit C	Form of Bill of Sale

**EXHIBIT A  
TO PURCHASE AGREEMENT**

**LEGAL DESCRIPTION**

A parcel of land in the City of Detroit, Wayne County, Michigan, described as follows:

Beginning at the Southwesterly corner of Woodbridge Street (50 feet wide) and Randolph Street (120 feet wide); thence, along the Westerly line of Randolph Street, South 30 degrees 06 minutes 41 seconds East 250.48 feet to the Northwesterly corner of Randolph Street and Atwater Street (50 feet wide); thence, along the Northerly line of Atwater Street, South 68 degrees 43 minutes 47 seconds West 325.04 feet to a point of deflection; thence, continuing along the Northerly line of Atwater Street, South 59 degrees 57 minutes 59 seconds West 90.67 feet to the Easterly line of vacated Bates Street (50 feet wide); thence, along the Easterly line of vacated Bates Street, North 30 degrees 13 minutes 05 seconds West 200.00 feet to the Southeasterly corner of vacated Bates Street and vacated Woodbridge Street (50 feet wide); thence, along the Southerly line of vacated Woodbridge Street, North 59 degrees 49 minutes 57 seconds East 412.23 feet to the point of beginning, together with Grantor's entire right, title and interest in and to the entire portion of the existing subsurface tunnel situated North of the International Boundary Line and located in part in the subsoil under the Detroit River, in part under the Tunnel Property and in part under vacated and unvacated Randolph Street, and which is presently being operated by the Detroit and Windsor Tunnel Corporation as a tunnel for international vehicular travel between the Cities of Detroit and Windsor.

**EXHIBIT B  
TO PURCHASE AGREEMENT  
(QUIT-CLAIM DEED)**

The Grantor, the City of Detroit, a Michigan municipal corporation and home rule charter city, whose address is City County Building, Detroit, Michigan 48226, quitclaims to the Grantee, Detroit Transportation Authority, a Michigan public transportation authority formed by Detroit, whose address is [address of DTA], the premises in Detroit, County of Wayne, and State of Michigan, (the "Tunnel Property"), the legal description of which is more fully set forth on Exhibit A attached hereto and made a part hereof, together with any and all rights Grantor may have for ingress and egress to and from the Tunnel Property from the East (except from unvacated Randolph Street and Jefferson Avenue);

Together with Grantor's right, title and interest in and to the entire portion of the existing subsurface tunnel situated North of the International Boundary Line and located in part in the subsoil under the Detroit River, in part under the Tunnel Property and in part under vacated and unvacated Randolph Street (the "Tube") and which is presently being operated as a tunnel for international vehicular travel between the Cities of Detroit and Windsor; and

Together with all of the fixtures, equipment and mechanical and utilities systems, located in or on the premises; and

Together with all and singular the tenements, heridataments and appurtenances thereunto belonging or in anywise appertaining; exclusive, however, of the Grantor's ownership, possession and control of the entire ventilation system, (including the ventilation control equipment) located on the Tunnel Property;

Subject to the terms and conditions of that certain Lease between the Grantor, as lessor, and the Detroit and Windsor Tunnel Corporation, as lessee, dated \_\_\_\_\_, 19\_\_; and

[Subject further, to the reservation by the Grantor of certain easements \_\_\_\_\_].

For the sum of One and 00/100 dollar (\$1.00) and other valuable consideration, subject to easements and building and use restrictions of record.

This instrument is exempt from Michigan Transfer Tax under M.C.L. 207.505(h)(i) and M.C.L. 207.226(h)(i).

Dated: \_\_\_\_\_

GRANTOR  
THE CITY OF DETROIT

By: /s/ \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN    )  
\_\_\_\_\_ COUNTY        )

The foregoing instrument was acknowledged before me this [date] by [name of officer or agent, title of officer or agent] of [name of corporation acknowledging], a [state or place of incorporation] corporation, on behalf of the corporation.

/s/ \_\_\_\_\_

[Notary public's name, as it appears on application for commission]

Notary public, State of Michigan, County of [county].

My commission expires [date].

[If acting in county other than county of commission: Acting in the County of [county].]

Drafted by and when recorded return to:

Vicki Harding

100 Renaissance Center, Suite 3600

Detroit, Michigan

Tax parcel #

[parcel number]

Recording fee:

\$(amount)

Transfer fee

\$(amount)



## **EXHIBIT A**

### **TO QUIT CLAIM DEED**

#### **PROPERTY DESCRIPTION**

A parcel of land in the City of Detroit, Wayne County, Michigan, described as follows:

Beginning at the Southwesterly corner of Woodbridge Street (50 feet wide) and Randolph Street (120 feet wide); thence, along the Westerly line of Randolph Street, South 30 degrees 06 minutes 41 seconds East 250.48 feet to the Northwesterly corner of Randolph Street and Atwater Street (50 feet wide); thence, along the Northerly line of Atwater Street, South 68 degrees 43 minutes 47 seconds West 325.04 feet to a point of deflection; thence, continuing along the Northerly line of Atwater Street, South 59 degrees 57 minutes 59 seconds West 90.67 feet to the Easterly line of vacated Bates Street (50 feet wide); thence, along the Easterly line of vacated Bates Street, North 30 degrees 13 minutes 05 seconds West 200.00 feet to the Southeasterly corner of vacated Bates Street and vacated Woodbridge Street (50 feet wide); thence, along the Southerly line of vacated Woodbridge Street, North 59 degrees 49 minutes 57 seconds East 412.23 feet to the point of beginning, together with Grantor's entire right, title and interest in and to the entire portion of the existing subsurface tunnel situated North of the International Boundary Line and located in part in the subsoil under the Detroit River, in part under the Tunnel Property and in part under vacated and unvacated Randolph Street, and which is presently being operated by the Detroit and Windsor Tunnel Corporation as a tunnel for international vehicular travel between the Cities of Detroit and Windsor.

**EXHIBIT C  
TO PURCHASE AGREEMENT  
(BILL OF SALE)**

**BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, **City of Detroit, Michigan**, a Michigan municipal corporation ("***Seller***"), does hereby sell to , **Detroit Tunnel Authority**, a Michigan public transportation authority ("***Purchaser***"), all of Seller's rights, title and interests in personal property of every conceivable kind or character whatsoever, tangible or intangible as described in Exhibit A (the "***Property***"), including but not limited to the machinery, fixtures (including all trade fixtures as defined in the Michigan Uniform Commercial Code), equipment and other tangible personalty, located on or about the Property and used in connection therewith (collectively, the "***Personal Property***").

Seller represents and warrants that the Personal Property has been constructed, operated, owned, maintained, repaired and used free from all claims, suits, liabilities, debts, bodily injuries, property damages, liens, claims of lien, damages or costs and expenses ("***Claims***") asserted or assertable in connection with construction, operation, ownership, maintenance, repair and use of the Personal Property. Seller further represents that the Personal Property has been continuously maintained and repaired in good condition and the condition required of a gas station, that there is no defect in the Personal Property and all of the Personal Property are in good working order (with no deferred maintenance). Seller shall indemnify, defend and hold Purchaser harmless from and against any and all Claims and all other cost and expenses incurred by Seller as a result of a breach of the warranties and representations contained in this Bill of Sale.

Dated: \_\_\_\_\_, 2008

**SELLER:**

**CITY OF DETROIT, MICHIGAN**

a Michigan municipal corporation and home rule city

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF WINDSOR  
CORPORATE SERVICES/Office of the CAO – Windsor Tunnel Commission**



**MISSION STATEMENT:**

*"The City of Windsor, with the involvement of its citizens, will deliver effective and responsive municipal services, and will mobilize innovative community partnerships"*

<b>Author's Name:</b> Mark W. Galvin	<b>Date to Council:</b> March 27, 2008
<b>Author's Phone:</b> 519 255-6100 ext. 1733	<b>Classification #:</b>
<b>Author's E-mail:</b> mgalvin@city.windsor.on.ca	

**To:** Mayor and Members of City Council and Members of the Windsor Tunnel Commission

**Subject:** Windsor-Detroit Tunnel Rollover to Windsor-Detroit Tunnel Corporation

**1. RECOMMENDATION:**

City Wide: ☒ Ward(s): \_\_\_\_\_

That Administration **BE AUTHORIZED** to execute the Asset Purchase Agreement for the purchase price of \$111,474,949 representing \$7,172,289 of Accounts Receivable and \$104,302,660 of Real Property and Fixed Assets and Equipment, the foregoing amounts being subject to final audit by KPMG; and

That City Council **AUTHORIZES** the CFO/City Treasurer to advance cashflow loans for working capital purposes to WDTC until such time as other working capital arrangements are in place and subject to applicable interest charges being applied by the City of Windsor on any outstanding balances, the foregoing amounts to be reported by the CFO/City Treasurer to City Council on a quarterly basis; and

That City Council **APPROVES** the Resolutions attached as Appendix A and Appendix B to this report.

**2. BACKGROUND:**

At the City of Windsor Council meeting held on June 11, 2007, City Council resolved the following:

That Administration **BE AUTHORIZED** to incorporate a share capital corporation under the Business Corporation Act (Ontario) ("Holdco") of which Windsor will be the sole shareholder; and

That Council **APPROVES** the name of the corporation to be "Windsor-Detroit Tunnel Corporation", or such similar name as may be available for use; and

That the City of Windsor **WILL SELL AND TRANSFER** to the corporation the Canadian Tunnel and all of Windsor's assets used in association therewith for a purchase price equal to fair market value; and

That Administration **BE AUTHORIZED** to incorporate a share capital corporation under the Business Corporation Act of the State of Michigan ("Subco") and to transfer all of its shares of Subco to Holdco so that Subco will be a wholly owned corporation of Holdco; and

★ [ That Council **APPROVES** that the name of Subco will be "Detroit-Windsor Tunnel Corporation", or such similar name as may be available for use; and

[ That after its incorporation, subject to the acceptance by Windsor City Council of the terms of an operating agreement, Subco will enter into the operating agreement with Detroit and will operate the US Tunnel; and

THAT Mr. Clifford N. Sutts **BE AUTHORIZED** to prepare and file articles of incorporation for the share capital corporations in Ontario and Michigan as outlined in the report to City Council dated May 28, 2007; and

THAT the General Manager of Corporate Services **BE AUTHORIZED** to sign documents necessary to the incorporation of the share capital corporations in both Ontario and Michigan as the "incorporator" as outlined in the report to City Council dated May 28, 2007; and

THAT Mr. Edgar Francis, Mr. John Skorobohacz and Mr. Onorio Colucci, **BE DESIGNATED** as the first Directors and Officers of these corporations.

In approving the above, Council recognized the need for incorporation of a separate entity to govern Tunnel operations.

On September 17, 2007, the Windsor-Detroit Tunnel Corporation was formally incorporated under the Business Corporations Act (Ontario).

★ [ The terms of the Asset Purchase Agreement have been finalized by Administration and all relevant due diligence has been completed to facilitate the asset transfer.

For convenience, the Asset Purchase Agreement is attached as Appendix C.

### **3. DISCUSSION:**

#### **Included Assets**

Other than financial matters related to this transaction, which are detailed in the next section, the Asset Purchase Agreement includes all City of Windsor assets used in association with the operation of the Windsor-Detroit Tunnel. These assets include, but are not limited to, the following:

- ◆ All real property interests owned by the City of Windsor in association with the Windsor-Detroit Tunnel;
- ◆ All buildings on the Windsor Tunnel Plaza;
- ◆ Land and building at 310 Hanna Street;
- ◆ Title to the waterlot;
- ◆ Accounts Receivable – including Windsor revenue and token revenue collected by the Detroit-Windsor Tunnel Corporation ('DWT');
- ◆ All inventories;
- ◆ All contracts and the full benefit of all service contracts;
- ◆ All fixed assets, including but not limited to, machines, machinery, equipment, fixtures, furniture, furnishings, vehicles, etc. owned or held by or for the City of Windsor;
- ◆ All policies of insurance related to the Tunnel.

A full description of the purchased assets is available in the Asset Purchase Agreement, including any necessary agreements for access under City streets and property.

#### WDTC Governance

The WDTC will be governed by a Board of Directors. It is the intention of Administration to recommend to the City of Windsor Striking Committee of Council, that the current members of the Windsor Tunnel Commission sit on the Board of Directors of the WDTC. This recommendation will be made at the earliest opportunity once City Council has authorized execution of the Asset Purchase Agreement. At any time, the striking committee may invoke an alternative procedure to appoint the Board of Directors to this Company. The striking committee may at that time elect to deal with the issue of Director compensation.

#### WDTC Management

The JOA dated 1 November 1997 (the "JOA") between DWT (successor to DCTC/DWSC) and the City of Windsor and the Windsor Tunnel Commission will be assigned by Windsor to WDTC on completion of the transfer of the Tunnel assets to WDTC. WDTC, as the owner of the Canadian Tunnel, will thereafter be solely responsible for the operation, management, repair and maintenance of the Canadian Tunnel and day-to-day management will be provided for WDTC by DWT pursuant to the JOA. The JOA will remain in effect until terminated by either WDTC or DWT.

Currently only two City of Windsor employees are devoted full time to the Tunnel:

- ◆ Mark Galvin, Executive Director, Windsor Tunnel Commission (Temporary)
- ◆ Ken Downing, Tunnel Financial Officer (Temporary)

It is the intention that any additional staff and administrative services required by WDTC from time to time to monitor Tunnel operations during the two year period following the transfer will be provided by Windsor, subject to availability of staff and services, pursuant to a management services agreement as contemplated by Section 11 of the Asset Purchase Agreement. That additional staff may consist of one or more of the following persons and their cost will be billed by Windsor to WDTC pursuant to the management services agreement.

- ◆ Helga Reidel, General Manager of Corporate Services
- ◆ Greg St. Louis, Acting Manager of Corporate Projects
- ◆ Adrian Busa, Technologist I

- ◆ Onorio Colucci, Chief Financial Officer & City Treasurer/ Treasurer of the WTC
- ◆ Joe Mancina, Deputy City Treasurer
- ◆ Ari Varsa, Financial Analyst
- ◆ Sue Hallet-Zufelt, Financial Analyst

#### Current Joint Operating Agreement with Detroit-Windsor Tunnel Corporation

The current JOA expired on October 31, 2007 and remains in full force and effect subject to termination by ninety (90) days notice by either party. At the present time, neither party to the JOA has provided notice of termination. DWT is aware of the intention of the City of Windsor to complete the sale of Tunnel assets and to assign the JOA to WDTC.

## 4. FINANCIAL MATTERS:

### Financial Terms of the Rollover

As part of the previously noted resolution passed on June 11, 2007, City Council approved the following:

“That the City of Windsor **WILL SELL AND TRANSFER** to the corporation the Canadian Tunnel and all of Windsor’s assets used in association therewith for a purchase price equal to fair market value.”

On this basis, administration engaged the services of Price Waterhouse Coopers (‘PWC’) to complete a valuation of the estimated fair market value of the operating rights of the Canadian portion of the Detroit-Windsor Tunnel as a going concern. The fair market value is commonly defined as the highest price, expressed in terms of money’s worth, obtainable in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to transact.

PWC considered three valuation approaches in determining how to estimate the fair market value of the Canadian portion of the Detroit-Windsor tunnel. The approaches considered were the Income approach, the Market approach and the Cost approach. Based on PWC’s review it was determined that the Market approach would not be considered appropriate due to the lack of sufficient comparable public companies and the lack of transactions involving sufficient comparable companies or assets. The Cost approach was also not considered an appropriate methodology by PWC, since the tunnel is expected to continue in its current use, which results in generation of profitable cashflows. On this basis, PWC selected the Income approach for the valuation of the tunnel. The Income approach estimates the fair market value of an asset based on cash flows that the asset is expected to generate over its remaining useful life.

Using the Income approach, PWC estimated the fair market value of the operating rights of the Canadian side of the Tunnel at or about the valuation date of June 30, 2007 at between US \$80,100,000 and US \$97,900,000.

For the purposes of the asset transfer between the City of Windsor and the Windsor-Detroit Tunnel Corporation administration is recommending that the high-end valuation amount be established as the sales price. Based on a US currency exchange of 1.0654 as provided by the Bank of Canada at the close of business on June 29<sup>th</sup>, 2007, the US\$ 97,900,000 would equate to CDN \$104,302,660. This high end value is recommended in order to optimize the value to City

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of Windsor taxpayers, at what may be the only or most reasonable opportunity to do so- the initial time of asset rollover/sale. The independent board of directors, which may change in composition over time, will make business decisions that are in the best interests of the bottom line of WDTC.

While the sales price of the real property, fixed assets and equipment was established through the Income valuation approach as detailed above has resulted in a value of CDN \$104,302,660, accounting guidelines relating to the transfer of assets between related party entities requires that the assets be accounted for by the purchaser based on Net Book Value ('NBV'). Essentially, this requires the purchaser to record the NBV of the assets on their balance sheet, regardless of the sales value that has been agreed upon. The NBV would normally reflect the accounting values that have been recorded by the seller within their accounting books and on their financial statements. Given this requirement, and the fact that the municipalities are currently not required to account for tangible capital assets it became necessary to develop an appropriate methodology to calculate the NBV for the tunnel assets to be transferred.

*Sales Price  
versus  
Net book value.*

Utilizing a number of the methodologies that have been provided to municipalities for the introduction of Accounting for Tangible Capital Assets (PSAB 3150 for January 1, 2009) including discounted reproduction cost and discounted replacement cost, a NBV of the tunnel assets to be transferred was determined. The methodology with supporting files for the calculations were reviewed with the City's auditors, KPMG, to ensure that appropriate methodologies were utilized in establishing the necessary accounting values for the opening balance sheet of the tunnel assets. Based on their review of the files, KPMG has concurred with and audited the approach undertaken and with the accounting values established for the opening balance sheet for the Windsor Detroit Tunnel Corporation.

The following represent the NBV values established for the tunnel assets for accounting purposes:

Asset Category	Historical Value	Accumulated Depreciation	Net Book Value at 12/31/2007
Detroit Windsor Tunnel Tube	\$130,949,973	\$24,774,319	\$106,175,654
Land/Land Improvements	\$9,565,767	\$0	\$9,565,767
Buildings & Improvements	\$30,673,743	\$13,419,763	\$17,253,980
Machinery & Equipment	\$15,309,584	\$2,284,586	\$13,024,998
Furniture & Fixtures	\$50,000	\$45,000	\$5,000
Vehicles	\$538,675	\$454,845	\$83,830
Computers	\$33,418	\$19,978	\$13,440
Total	\$187,121,160	\$40,998,491	\$146,122,669

### Letter of Credit

The transfer of the Canadian portion of the tunnel from the City of Windsor to the Windsor Detroit Tunnel Corporation results in the payment of Land Transfer Tax. Legal counsel acting on behalf of the City on this matter has advised that the Windsor Detroit Tunnel Corporation is able to apply for a deferral/exemption from payment of the Land Transfer Tax (LTT) in respect of the transaction pursuant to subsection 3(9) of the LTT Act. In doing so, WDTC will be required to provide a letter of credit to the Minister of Finance as security for payment of the deferred tax and interest. It is estimated that the letter of credit will be for an approximate amount of between \$2,000,000-2,100,000 and when finally determined, that the amount will not exceed \$2,500,000 and will be for a twelve (12) month renewal term. Legal Counsel advises that the potential payment for Land Transfer Tax will no longer be required if after 36 months the City of Windsor has not disposed of its shares in WDTC.

As WDTC's only asset will be its interest in the Canadian Tunnel, which will be encumbered in favour of the City to secure the purchase price, it is uncertain if it could obtain the necessary letter of credit without the City of Windsor's guarantee. In the interests of ensuring the timely completion of the transaction it is necessary for the City of Windsor to provide the necessary guarantees relating to the Letter of Credit. Therefore, the current recommendation within the report seeks council's approval as follows:

*"The Corporation hereby authorizes the CAO and the Clerk, on behalf of the Corporation, to execute and deliver under its corporate seal a guarantee in favour of the Bank of Nova Scotia, in the said bank's regular form whereby the Corporation guarantees the indebtedness of WDTC to the said bank in respect of the said letter of credit, the Corporation's liability limited to the amount of the said letter of credit issued by the said bank.*

### Impact of Rollover on City of Windsor Finances

The rollover of the tunnel assets to the Windsor Detroit Tunnel Corporation would essentially result in the closure of the current accounts of the Windsor Tunnel Commission held by the City of Windsor. WDTC would record a note payable to the City of Windsor relative to the sales value of CDN \$111,474,949 established for the transfer of the assets offset by the cumulative amount of any liabilities which it will assume from the former Windsor Tunnel Commission. Based on the unaudited balance sheet of the Windsor Tunnel Commission as at December 31, 2007 it is anticipated that the opening balance sheet of WDTC would be as follows:

### **WDTC Projected Balance Sheet**

	<u>Opening Balance Sheet CDN</u>	
	<b>DR</b>	<b>CR</b>
Accounts Receivable net of Allowance	7,172,289	
Accounts Payable-Trade		7,672,096
Capital Assets net of Depreciation	146,122,669	
Note Payable COW-Net Sales Value		103,802,853
Share Capital		500
Contributed Surplus		41,819,509
Total	<u>153,294,958</u>	<u>153,294,958</u>



Essentially, the agreed sales value of CDN \$111,474,949 (\$104,302,660 relating to Real Property & Fixed Assets and Equipment plus \$7,172,289 relating to Accounts Receivable) would be offset by the assumed liabilities of the Windsor Tunnel Commission totaling \$7,672,096. Council should note that this balance sheet represents an estimate as projected at December 31, 2007 and may be subject to change as a result of the final year-end audit of the Windsor Tunnel Commission, which still remains to be completed. It is recommended that the closing be as of January 1, 2008, and that all transactions after that date that have flowed through the Windsor Tunnel Commission accounts are transferred to WDTC.

The City of Windsor would record a note receivable from WDTC in the amount of \$103,802,853 and subject to the following terms:

- Interest on the note receivable from WDTC would accrue at a rate of 5.00% (the intent is to set a rate that is consistent with the rate that would be charged to the City if the City were borrowing over the same term).
- Payment amounts and frequency would be established in the future based on available cashflows.

While the City is required to record a note receivable from WDTC, it is important for council to note that this amount represents a component of the City's investment in the new Corporation. This amount will form part of the City's Equity in Government Business Enterprises ('GBE'). It does not represent the value of any fund balance or reserves held by the City, and therefore cannot be utilized by City Council at this time for any priority initiatives. However, as the note receivable balance is paid, in whole or in part, Council will have the option of utilizing the payments at its discretion.

In order to better illustrate the financial impacts of the transfer on the City's balance sheet the following is provided to illustrate the balance sheet impacts to the City of Windsor upon transfer:

#### City of Windsor Balance Sheet

	Opening Balance Sheet CDN	
	DR	CR
Note Receivable WDTC	103,802,853	
Investment in GBE	41,820,009	
Equity in GBE		145,622,862
Total	145,622,862	145,622,862

As this will be a 100% City owned asset, the City will be eligible to receive dividends subject to operating results and cashflow requirements of the new corporation. Any dividends will need to be declared by the WDTC board of directors on the basis of operating results as well as the guidelines in the shareholder direction documents.

### Impact of Rollover on WDTC Finances

Under the current existing model the Windsor Tunnel Commission has essentially been accounted for within the City's current accounting structure with a separate business unit within the Peoplesoft financial system. As a result, the Windsor Tunnel Commission has been provided with ongoing cash flow financing through the City's consolidated banking arrangements. Essentially, the City provides the necessary cash flow financing to the Windsor Tunnel Commission subject to normal interest charges.

The WDTC will manage all elements of its operations and finances independent of the City of Windsor. However, the City will consider making loans to WDTC until such time as it is able to negotiate independent financing arrangements. Excluding the accounts payable to the City of Windsor, the current net liability on the opening balance sheet is expected to be \$499,807 (\$7,672,096 less \$7,172,289). As such, WDTC will require an initial infusion of working funds of at least this amount. Additional amounts may be required depending on the timing and amount of ongoing operating cashflows.

## **5. CONSULTATIONS:**

Clifford Sutts, Q.C., Sutts, Strosberg (to be in attendance for questions)  
C. Swift, KPMG  
N.K. Thomas, KPMG  
T. Clark, KPMG

## **6. CONCLUSION:**

As outlined above, City Council previously authorized incorporation of a share capital corporation – the Windsor-Detroit Tunnel Corporation – for the purpose of operating the Canadian side of the Windsor-Detroit Tunnel on behalf of the City of Windsor. It is now necessary to complete the Asset Purchase Agreement transferring all City of Windsor assets used in association with the operation of the Canadian side of the Windsor-Detroit Tunnel to the new corporation, WDTC.

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**Mark W. Galvin**  
**Executive Director for the Windsor**  
**Tunnel Commission**

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**John Skorobohacz**  
**Chief Administrative Officer**

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**Helga Reidel**  
**General Manager of Corporate Services**

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**Onorio Colucci**  
**City Treasurer**

**MG**

**APPENDICES:**

**Appendix A – Draft Resolution of Council – Rollover**

**Appendix B – Draft Resolution of Council – Letter of Credit**

**Appendix C - Asset Purchase Agreement - To be distributed at the meeting.**

**DEPARTMENTS/OTHERS CONSULTED:**

**Name:**

**Phone #: 519                      ext.**

**NOTIFICATION :**

Name	Address	Email Address	Telephone	FAX

## Windsor tunnel legal tab: A hefty \$1.2 million

**Dave Battagello**

Windsor Star

Friday, April 04, 2008

The city has spent \$1.2 million in legal fees to date as it attempts to negotiate a deal with Detroit over control of the U.S. side of the Windsor-Detroit tunnel.

Local lawyer Cliff Sutts has been the city's lead negotiator for close to two years. Fees have also been paid to consultants or accountants assigned to evaluate the tunnel.

Despite the mounting legal costs, council remains behind the effort to determine if securing a deal with Detroit - potentially involving more than \$100 million - is in the city's best interests.

Detroit owns the U.S. side, but has leased it to Alinda, a private investment firm, until 2020.

"With the information put in front of me, I'm comfortable with (the legal costs)," said Coun. Joanne Gignac.

"Two years ago we identified this as a huge issue for us."

Council's concerns over the tunnel's fate first came to the fore when Ambassador Bridge owner Matty Moroun made a bid to take control of the U.S. side and touted a superplaza plan that would have forced tunnel traffic to clear U.S. customs several kilometres away at the bridge plaza.

"It would have meant a huge time delay and inconvenience for people travelling to the east part of Detroit," Gignac said. "It remains a concern to residents and me as a councillor."

But securing Windsor's tunnel interests may come at a steep price - figures mentioned during negotiations range from US\$58 million to US\$75 million.

Windsor recently moved to form a corporation around its ownership of the Canadian half, attaching a price tag of \$111 million.

One source suggested Windsor needed to create a corporation of its ownership in order to use the asset as collateral to secure a mortgage or bonds to finance a deal for the Detroit side.

The federal government was originally supposed to help fund the deal, but backed out of the talks nearly a year ago.

Detroit City Council President Kenneth Cockrel, Jr. said Friday his council has yet to see any "actionable documents" on the tunnel negotiations from the office of Mayor Kwame Kilpatrick.

Detroit council's motion last month for Kilpatrick to resign included references to the mayor's failure to secure a tunnel deal with Windsor as promised, leaving the city's budget in a bind last year because it hinged on \$58 million from the deal.

"We are hoping to get something in the next couple days," he said. "I think it's a possibility based on conversations my office had with the mayor's office. But we have been promised documents before. It's been delayed and delayed, but we've been told negotiations are ongoing."

"I'm willing to see what they come up with. I've always liked the idea of a joint management agreement, but the idea has to make sense for both cities."

Coun Drew Dilkens said despite the mounting legal fees, pursuit of the deal remains worthwhile.

"The fees are high but so is the expectation of due diligence to make sure the deal is right," he said. "I would rather spend the money in advance and not worry about this after the fact."



CREDIT: The Windsor Star file photo  
The Windsor-Detroit Tunnel.

"There ought to be a very strong business case before we jump into any kind of deal of this magnitude. At this point, we haven't seen that."

Coun. Bill Marra, a member of the tunnel commission, said his comfort level has declined since the federal and provincial governments backed away.

"Initially, it was based on being able to secure funding from the provincial and federal governments. I understand those opportunities don't exist. Regardless of how this is set up, it falls on the municipal taxpayer and there needs to be a good business case."

He noted that tunnel traffic has drastically declined in recent years to the point where the city's dividend from tolls has dropped from \$6 million to zero.

"(Sutts) is the best you can have on this," Marra said. "My concern is not legal finds, but ultimately is this decision favorable for the taxpayer. What looked good eight months ago might not be good today."

Neal Belitsky, CEO for Detroit Windsor Tunnel LLC, the private company formed by Alinda to operate the tunnel, said they remain aware of the talks but he had no comment other than to note his firm has an agreement in place until 2020.

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Wednesday » April  
9 » 2008

## Tunnel revenue plunges

### City's cash cow profit down \$3M

**Roseann Danese**  
Windsor Star

*Wednesday, August 23, 2006*

Revenues are slipping at the Windsor-Detroit tunnel and that means the city's share of profits this year -- from an asset that used to be described as a cash cow -- will be slashed by half.

The Canadian side of the tunnel took in \$12.2 million last year. More than \$6 million of the revenues went straight into the City of Windsor coffers, but the city's take will be cut to about \$3 million in 2006, according to city officials.

"It's not the cash cow that it once was," Coun. Alan Halberstadt said Tuesday.

#### PAYING OFF DEBT

About \$3.4 million will be put back into tunnel operations this year to pay off the debt on capital projects such as the first plaza expansion that was completed in the mid-1990s, according to Mayor Eddie Francis.

The city had been receiving \$6 million annually since about 1999, when tunnel revenues were at a peak. It became clear to the Windsor Tunnel Commission recently that those numbers could not be sustained because revenues were declining, said Francis, chairman of the tunnel commission.

Francis said the tunnel should be operated like a business and payments to the city should first take into account the tunnel's needs. "I would never look at the tunnel as a cash cow," the mayor said. "I look at it as a strategic asset."

Tolls have been increased to better reflect the cost of doing business. It now costs \$4 Cdn or \$3.50 US in one-way tolls.

Next year, the city's share of tunnel profits will be determined after surpluses are reinvested in capital projects. The figure may be lower than the \$3 million that was forwarded to the city this year. "Those decisions haven't been made yet," said Helga Reidel, general manager of corporate services.

Money will be needed to pay for the last portion of the \$20-million ventilation project and there's still a possibility the tunnel commission will be seeking a loan from the city to do that.

Toll revenues and rent from the duty free store peaked in 1999 at \$18.7 million. By 2005, after six years of steady declines, the city's take was \$12.2 million. "It's still a fairly heavy revenue," Reidel said.

For many years, because of the millions of dollars being generated at the tunnel, the city relied on those revenues to subsidize the city's operating and capital budgets.

"Sept. 11 came and that changed everything," Francis said. The declining number of visitors to Casino Windsor has a direct impact on tunnel revenues since most casino visitors coming from the U.S. enter Canada through the tunnel.

Halberstadt said it's unfortunate that the money is drying up because it came in handy during budget deliberations when the money was used to balance the budget or pay for services or projects that would otherwise not be funded.

"If we can get \$6 million from the tunnel, that's \$6 million we don't need from the taxpayer," Halberstadt said.

#### BY THE NUMBERS

Windsor-Detroit Tunnel revenues (from tolls, rent and a percentage of sales at the Canada Duty Free store)

1999: \$18.7 million; 2000: \$17.9 million; 2001: \$16.9 million; 2002: \$16.7 million; 2003: \$15.2 million; 2004: \$13.4 million; 2005: \$12.2 million.

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**Kwamegate Coming To Windsor?**

Written by Alan Halberstadt

Friday, 14 March 2008

Question of the day. Will Mayor Eddie Francis dial into a piece of the Kwame Kilpatrick text-messaging sex scandal on Monday night when Mayor Francis delivers Windsor's state-of-the-city address?

Detroit Mayor Kilpatrick has been a high-profile, front-row guest at previous Francis state-of-the-cities, but pundits are wondering if our mayor has extended an invitation this year in the wake of Kilpatrick's embarrassing soup opera across the river. Or if Kilpatrick, complete with limo and bodyguards, will show up if he is invited.

Should Kwame appear, the most important question from the Windsor media should have nothing to do with his sexual escapades and the race card he is playing to stave off a powerful movement to turf him as Detroit's mayor.

Kwame should be asked about the long-delayed negotiations between Detroit and Windsor to secure possession of the Detroit-Windsor Tunnel and infuse \$75 million into the coffers of Kilpatrick's cash-strapped administration.

Protracted, top-secret negotiations have been dragging on since last summer, at undisclosed legal costs. But now it appears that a deal may be near. Mayor Francis has called a special joint meeting of the Windsor Tunnel Commission, which he chairs, and Windsor City Council, on Thursday, March 27 at 3 p.m.

Mayor Francis received Council approval last spring to negotiate the deal based on an apparent study that assessed the costs and risks of operating the tunnel to 2020. I was the lone dissenter because I could not justify the unknown legal costs of negotiations without seeing even a trace of this study's conclusions.

On June 25 of last year, I asked the following Council Question in full public session: **"With regards to the negotiations taking place regarding the municipal ownership and operation of the Detroit-Windsor Tunnel, I request an actuarial study, a detailed financial prospective, a risk assessment, a traffic volume/revenue/expenditure analysis since September 11, 2001 and a projection of the lifespan of the facility."**

That question has yet to be answered. I am assuming that the Tunnel Commission, which also includes Councillors Dave Brister, Bill Marra and Fulvio Valentinis, has already seen the numbers behind closed doors, but I have not heard a whisper of them.

The major issue, of course, will be how Windsor will come up with the \$75 million. At one time Transport Canada was said to be willing to front the money, but that federal agency ran for the hills. Borealis, part of the consortium behind the Detroit-Windsor train tunnel partnership (DRTP), sent a letter to the Commission last summer expressing interest in the deal, but it was summarily noted and filed.

As for the latest indicator of the tunnel's declining fiscal health, the city's annual dividend from the tunnel has totally dried up. Whereas once the city received up to \$6 million per year from tunnel revenues, the city's 2007 budget was injected with only \$1 million, and Council recently approved the 2008 budget with zero contributions from the tunnel.

The trigger for the Francis initiative to take over the Detroit side of the tunnel came in 2005 when it was revealed that Kilpatrick, seeking re-election, had signed a binding deal (that turned out to be non-binding) with the hated Ambassador Bridge to turn over the operations of the Detroit side to Manny Maroun and company.

Mayor Francis was quoted as saying that Windsor needed to step to the plate and take over the tunnel since the Ambassador Bridge might pose a threat to block tunnel traffic by erecting a cement wall in the middle of

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## A Grand Vision of Small Solutions

Alan's 2006  
Election Platform

the tube.

The notice for the March 27 meeting, sent to Councillors, indicates that part of the session will be in camera and another part in open session. Hold onto your hats!

Readers have left 7 comments.

### No 1 Untitled

Councillors MUM with fellow coucillors. Now thats the way to run a city isn't it?

E-mail 

Anonymous (Unregistered) • 2008-03-14 06:37:17

### No 2 Untitled

US\$75M for an asset decreasing in value! HELP!!!!

Anonymous (Unregistered) • 2008-03-14 07:29:11

### No 3 Untitled

What I don't understand is that with declining usage of the tunnel why did Eddie Francis and the tunnel commission RAISE rates? If people aren't using your product, you don't raise the price of it! That is business 101 and a mayor who had won the "young entrepreneur of the year award" should know that shouldn't it? But then this could be one of the reasons why this city is in the state it is in.

The other issue is that we don't have money for watermain or electricity, we don't have money for the urban village downtown (or lack of proper tax incentives in the core) but we have money to buy a business that is declining in assets. Only in Windsor....

Dave (Unregistered) • 2008-03-14 08:30:36

### No 4 Untitled

For all I know, the purpose of the meeting on March 27th could be to announce that there is no deal. Perhaps we should call in Howie Mandel.

Alan Halberstadt (Unregistered) • 2008-03-14 08:41:12


### No 5 Untitled

Francis might have been a entrepreneur for a small business, but it appears that everything he has touched since becoming mayor and has turned into mud, obsfucation, bullshine baffles brains and if you can't convince them (which he hasn't) confuse them which he has done! The feds won't touch the tunnel, as they will not build a new bridge but Eddie doesn't understand that yet AND Alan and the rest of us WILL NOT GET AN ANSWER! Just more excuses and tales of demons and dragons threatening the city.

Eddie has the Mudas\* touch!

Cored! (Unregistered) • 2008-03-14 11:57:05

### No 6 Untitled

Now Alan, that H/4S funny! 


Anonymous (Unregistered) • 2008-03-15 13:23:33

### No 7 Untitled

Since when is it Windsor's responsibility to stop the bridge? That's a federal jurisdiction, clear and concise. My question would be, why does the Mayor insist on making it a personal agenda?

The tunnel won't last forever and with age maintenace will increase.

The City of Windsor  
350 City Hall Square West  
Windsor, ON  
N9A 6S1



**City of Windsor**  
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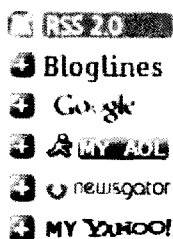
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The fact that information is not shared with elected officials and only beaurocrats, should be an eye opener 










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kdduck (Unregistered) • 2008-03-18 15:49:03

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**City of Detroit**  
CITY COUNCIL

**KENNETH V. COCKREL, JR.**  
COUNCIL PRESIDENT

**MEMORANDUM**

**TO:** Mr. Norman White  
Finance Director/CFO  
City of Detroit

**THRU:** The Honorable Sheila M. Cockrel  
Chair, Budget, Finance & Audit Committee

**FROM:** Kenneth V. Cockrel, Jr. *KVC*  
President

**RE:** Tunnel Deal & Request for Detailed Information

The Detroit City Council was initially promised an actionable document for the revised Detroit-Windsor Tunnel Deal on June 25, 2007. To date, there have been meetings and memorandums of little value to this Honorable Body to conduct any worthwhile due diligence in this important matter. Since this project is really an integral aspect of the Administration's Budget Deficit Reduction Plan; I am requesting the following information that must be sent to my office immediately on this matter, including but not limited to:

1. All negotiated and executed documents between Detroit and Windsor;
2. All financial documents supporting the proceeds going to the City;
3. Any engineering studies supporting the condition and useful life of the tunnel;
4. An appraisal of the tunnel, even though the deal is primarily predicated on toll revenues, past, existing and predicted;
5. Documents supporting the creation of the Detroit Tunnel Corporation, a creature of the state;
6. Likewise, documentation supporting Windsor's entity that would "own" it's half of the tunnel;
7. A good explanation why Windsor's side is "more valuable";
8. The parties involved, including point persons, in structuring this deal, since now an underwriter is not going to be utilized for the deal. Meanwhile, please provide copies of all Goldman Sach's information if the current deal is basically the same Goldman Sach's put together;

Memo to Finance Director White, page 2.

9. As emphasized in previous meetings by our Fiscal Director, Council needs to understand what \$75 million, or whatever the figure is, means. I take it as meaning the present value of all projected revenues on the deal. If this is the case, calculations showing this need to be provided, with all assumptions (basis of revenue projections, cost of maintenance of the tunnel, what happens after 2020, when DCTC goes away);
10. All documentation indicating the Province of Ontario's financial support for this deal, if any;
11. Windsor City Council's approval of the deal as currently structured; and,
12. Any concurrent agreement from the Windsor Commission that currently runs Windsor's side of the tunnel.

If the Administration wants Council to act on this transaction, Council needs all documents to make an informed decision. The tunnel deal needs to be put to bed, and soon. If it appears the deal can't properly be done anytime soon, then the Administration needs to start now thinking about an alternative funding mechanism to fill the at least \$58 million hole in the Budget. As you know, the Administration is currently opposed to selling \$58 million in fiscal stabilization bonds. Your quick response is expected and appreciated.

Thank You.

CC. Honorable Colleagues  
Irvin Corley, Jr., Fiscal Analysis Director  
David Whitaker, Esq., Research & Analysis Director  
Loren Monroe, CPA, JD  
Pamala Scales, Budget Director  
John E. Johnson, Corporation Counsel  
Kerwin Wimberly, City Council Liaison, Mayor's Office  
Kandia Milton, Chief of Staff  
Mayor Kilpatrick